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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

19 CARLOS VICTORINO,

Case No. 3:16-cv-01617-GPC-JLB

20 Plaintiff,

**FCA US LLC'S REPLY REGARDING
ITS SUBMISSION OF
SUPPLEMENTAL AUTHORITY IN
SUPPORT OF ITS MOTION TO
DECERTIFY OR TO MODIFY CLASS
DEFINITION**

21 v.

22 FCA US LLC,

Complaint Filed: June 24, 2016

23 Defendant.

24 Trial Date: None Set
25 Hearing Date: May 15, 2020
26 Time: 1:30 p.m.
27 Courtroom: 2D
Judge: Hon. Gonzalo P. Curiel

1 In support of its Motion to Decertify or to Modify Class Definition, Defendant
 2 FCA US LLC has submitted the recent opinion in *Sloan v. Gen. Motors LLC*, 2020 WL
 3 1955643 (N.D.Cal. 2020), as support for its argument that the class must be decertified
 4 or modified to exclude former owners of vehicles. Plaintiffs now argue that *Sloan* “has
 5 no bearing in this suit,” but they proffer only one explanation for this contention.
 6 ECF #346, p. 1. Specifically, Plaintiffs argue that because the certified class here does
 7 not include “used” vehicle purchasers there “can only be one point of sale for a new
 8 vehicle.” *Id.* at pp. 1-2.¹ But, this is a distinction without a difference and had
 9 absolutely nothing to do with the analysis in *Sloan*.

10 The court in *Sloan* excluded former vehicle owners from the class because it
 11 found that benefit-of-the-bargain damages based on a “cost of repair” can only make a
 12 current owner whole, *not* a past owner. 2020 WL 1955643 at *48. Of particular import
 13 here is the *Sloan* court’s express recognition that *both* “prior owners or lessees may
 14 have been harmed by paying more for their vehicles than they would have had they
 15 been aware of” an alleged defect, but, yet, there can be only one cost-of-repair damage
 16 award. *Id.* Based on this, the *Sloan* court concluded that since Plaintiff’s damage
 17 theory was that “by repairing the defect, Plaintiffs will receive the benefit of their
 18 bargain and be restored to the position they would have occupied but for the defect,”
 19 these damages must go to the current owner so he can get that repair. *Id.* In other
 20 words, the *Sloan* court found (correctly) that those who no longer owned their vehicles
 21 would not be “made whole” by a cost of repair damage award as was the goal of the
 22 damage theory, even if they had purchased their vehicles new. *Id.*

23 This logical finding fully supports FCA US’s argument as to why the class here
 24 needs to be decertified or at least limited to current owners. As FCA US explains in its
 25 motion, it is improper to include in the class those vehicle owners who have resold their
 26 vehicles because there is only a *single* “cost of repair” damage award available *per*

27 ¹Plaintiff wrongly suggests throughout his Response that the class at issue in
 28 *Sloan* included only “used” vehicle purchasers. The class under consideration actually
 included current owners of both new and used vehicles. *See* 2020 WL 1955643 at *39.

vehicle (regardless of how many “points of sale” there may have been), and determining whether that single award belongs to the original owner or a subsequent owner(s), or partially to each of them, raises a significant individual issue which defeats predominance. *See ECF #337-1, pp. 5-8.*

Plaintiffs do **not** dispute that they proffer the *exact same* classwide “cost of repair” damage model here as did the plaintiff in *Sloan*. And, their own expert’s stated basis for his conclusion that this damage model is appropriate is exactly the same as the expert concluded in *Sloan*, *i.e.*, “[p]ayment in the amount of the cost necessary to cure the Clutch Defect would make Class Members whole and provide them with the benefit of their bargain.” ECF 311-3, PageID.10863 at ¶ 11. As the court found in *Sloan*, even former owners who purchased their vehicles new are not the ones who will be made whole by a cost-of-repair damage award (they will, in fact, be made more than whole); such an award belongs to the current owners of the vehicles even if they purchased their vehicles used. Thus, the class should be decertified or redefined to include only current owners.

Dated: May 6, 2020

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